

**April 1, 2019**

Honorable Ajit Pai, Chairman  
Federal Communications Commission  
445 12th Street SE  
Washington, DC 20554

Re: Comments to Media Bureau on Video Description Marketplace Improvements (DA 19-40)

Dear Chairman Pai:

The American Council of the Blind (ACB) welcomes the opportunity to comment on the Federal Communications Commission (Commission) request for comments on improvements to the video description marketplace covered under the 21st Century Communications & Video Accessibility Act (CVAA)( PL 111-260). ACB believes the comments provided under this request will demonstrate to Congress the success that has come through the CVAA toward making a key part of American life accessible for individuals who are blind and visually impaired. At the same time, we believe there is still much opportunity for growth as we near the tenth anniversary of the CVAA.

ACB is a leading national grassroots consumer-based advocacy group for Americans who are blind and visually impaired. Comprised of over 70 state and special-interest affiliates, ACB strives to create equal opportunity and expand independence for Americans who are blind and visually impaired. ACB played a vital part in the development, passage, and implementation of the CVAA, which made significant advancements in the accessibility to mobile and telecommunications media providers. Subsequently, ACB has been actively involved with government and industry to assure that the intent of the CVAA remains a priority for the Commission, and that accessibility standards are met with great consideration toward the consumer's best interest.

### **Breaking Down the Marketplace**

Chief among these priorities around the CVAA is advocacy for expansion of audio description. According to the Centers for Disease Control's (CDC) Vision Health Initiative, the incidence of blindness will continue to significantly increase over the next couple of decades, essentially doubling from the time the CVAA was passed in 2010.<sup>1</sup> This increase continues to create greater demand for accessible video programming. As older-age adults rely more on the care of their families, it can reasonably be assumed

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<sup>1</sup> See CDC's "Burden of Vision Loss." Accessed online on June 22, 2016 at:  
[http://www.cdc.gov/visionhealth/basic\\_information/vision\\_loss\\_burden.htm](http://www.cdc.gov/visionhealth/basic_information/vision_loss_burden.htm).

that the impact will ripple across the overall market share of households, wherein families choose to seek reasonable accommodations for their loved ones.

Past studies affirm this assertion, showing that over 75% of individuals who are blind or have significant vision loss live in a household with more than one individual.<sup>2</sup> Understanding this, ACB recognizes that a significant share of American households will be impacted to a great extent, requiring greater steps be taken to make homes more universally accessible. Television provides a window into the outside world, and while the CDC's VHI acknowledges that increased morbidity, depression, and other factors that prevent social inclusion are greater for individuals with severe vision loss, ACB encourages that action be taken to improve the quality of life through universal access in a manner that creates equal participation and inclusion in American society.

Indeed, ACB has recognized this demand and remains the leading voice in our country for audio description. ACB played a critical role a decade ago in shepherding the CVAA through Congress, working closely with then Rep. Edward J. Markey (D-MA). During our 2009 national convention in Orlando, FL, ACB passed unanimously a resolution making the 21st Century Communications & Video Accessibility Act a priority of ACB.<sup>3</sup> Over the years, ACB has invested organizational resources into training qualified audio describers. Our Audio Description Project (ADP) convenes its AD training institute at least twice a year whenever we hold a national meeting of our membership, and we continually work with other private, public, and not-for-profit organizations globally throughout the year in order to assure that compliance and growth continue to meet the increase in demand. Occupying this vantage reaffirms our belief that the market is capable of expanding AD, and we believe that any report to Congress should echo the success over the past decade while indicating that demand will continue to be on the rise over the next two decades.

In the summer of 2016, ACB conducted a survey on the use of audio description. The results, which ACB shared with the Commission in the fall of 2016, reaffirmed our assumption that while the CVAA opened the door to audio described programming on television, we still had quite a way to go before reaching comparable standing with accessible programming for audiences who are deaf and hard of hearing, who through their advocacy have been able to achieve a nearly 100% ratio of accessible captioned content.

In the survey, ACB discovered that our investment in resources to promote expansion of audio description were not misplaced. The following highlights key findings from that survey:

- 91% of respondents reported listening to audio description in the past, with 69.7% blind, 21.1% visually impaired, and 8.2% sighted.
- 75.3% of respondents strongly agree that a greater amount of audio-described programming is needed.
- Almost half (45%) have difficulty in finding programs with audio description.
- More than half (53%) of respondents were over the age of 50, with one-third between the ages of 50-64.

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<sup>2</sup> Zuckerman, Diana M. (2004) "Blind Adults in America, Their Lives and Challenges." National Center on Research for Women and Families. Accessed October 21st, 2016 online at <http://center4research.org/.../blind-adults-in-america-their.../>

<sup>3</sup> <https://www.acb.org/resolutions2009>

- The overwhelming majority of audio description use was for broadcast television, regardless of the degree of vision loss, with nine out of ten being blind and eight out of ten partially sighted.
- More than three-quarters of respondents who were sighted reported using audio description in the household, noting among the reasons being other disabilities or roommates who were blind as a factor.
- One respondent who reported having no visual impairment but was autistic said that audio description is used in conjunction with closed captioning, in order to better assist with following the content.

## **Expansion of Audio Description Content**

ACB echoed the findings of our survey before the Commission in the days leading up to the July 2017 Commission vote of the rule in order to expand the quarterly requirement from 50 to 87.5 hours. We were pleased to see the Commission voted in support of this expansion, and ACB has been engaging with covered entities to find ways they can expand their programming content to include additional hours.

One area of concern that has been raised pertains to certain networks that use a programming model that relies heavily on the use of reruns throughout the day. ACB has gone on record of recognizing that in some cases there may exist a need for leniency on the additional 37.5 hours during non-non-primetime if/when such a covered entity has such a vast catalog of already described content that is being recycled creating a disadvantage weighed against it compared to other networks that have much more new content. ACB is hopeful that the Commission can clarify any such rule encompassing reruns that takes into consideration networks that provide an overwhelming amount of already described content in a changing marketplace of viewing habits regarding traditional broadcast content. This may be something to consider if Congress and the Commission move toward increased expansion of audio description content and any increase in the number of covered entities.

## **Cutting the Cord**

Clear distinction between fee-based Internet services and multi-video programming distributors have been clouded in recent years with online services like SlingTV that provide live television streams. Since the passage of the CVAA, data shows that more and more Americans are moving away from the model of broadcast and cable television anchored in the implementation of the CVAA.<sup>4</sup> Without clear regulations from the Department of Justice (DOJ) on Title III of the Americans with Disabilities Act (ADA) and web accessibility, many of these services operate without clear and concise regulations guaranteeing equal access under the ADA. Such lack of guidance has resulted in positive steps in the courts, a costly and time-consuming process. However, ACB has found it to be a positive experience when pressure to cultivate accessibility crosses into the space where television viewership is migrating. Last year, ACB reached a settlement with the popular online streaming service Hulu, which has begun to provide live broadcast programming with audio description for those choosing to transition away from traditional broadcast and cable providers. As companies like Comcast, who have been recognized as

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<sup>4</sup> Horrigan, John; Duggan, Maeve. Dec. 21, 2015). Home Broadband 2015: One-in-Seven Americans Are Television "Chord Cutters." Washington, DC. Pew Research Center. Accessed March 19, 2019 at <http://www.pewinternet.org/.../4-one-in-seven-americans-are-.../>

leaders in accessible programming, strive to remain competitive by offering similar streaming app-based services, ACB believes that the marketplace will continue to have a variety of alternative multi-programming distribution systems. What lacks is a clear and defined stance by the Commission toward the role accessibility plays in this new era of television.

ACB continues to assert that if the Internet is used to carry live terrestrial broadcast television, the Commission should have jurisdiction under the CVAA to regulate such program delivery systems if provided alternatively through internet streaming to smart devices. This should include assurances that audio description will be passed through and that programming guides will remain accessible so users can independently access audio described programming.

### **Centralized Audio Description Listings**

During the 2018 ACB National Convention, ACB members passed unanimously a resolution calling on the Commission to work with industry and advocates toward developing a central listing of audio described programming. Passage of the resolution by unanimous consent demonstrates the demand for informing television audiences what programming is available with audio description. Such a centralized list will also greatly assist in assuring that covered networks under the CVAA are meeting their required mandate of 87.5 quarterly hours of described content.

### **IP Based MPDS**

Another area of opportunity on the horizon for audio description is the current transition to the next generation of digital broadcasting. ACB has heard from engineers in the industry that the next generation of broadcasting will be capable of overcoming a significant conflict to pass-through of described content. That conflict is with the current set-up of AD pass-through using the Secondary Audio Program (SAP) channel. This channel is also used for Spanish language audio. Subsequently, ACB routinely receives complaints that audio described programming takes a back seat to Spanish language audio feeds. The SAP architecture is reliant on technology that predates much of the innovation in the digital broadcast space. ACB understands that future Multi-Programming Distribution Systems (MPDS) will be capable of losing the SAP in exchange for a greater range of selections similar to IP based video streams, which can be set up to have multiple audio feeds in tandem with a video feed. Foreign airline carriers currently use such systems for providing in-flight entertainment in multiple languages, such as Virgin Atlantic Airways, who with their partner Blue Box developed a video streaming application that integrated seamlessly audio described programming on tablets provided to airline customers. At a 2018 APEX Tech conference, the Blue Box developer acknowledged the deliberations of a transportation working group tasked with developing in-flight entertainment systems in sync with the CVAA as a catalyst for their own desire to develop accessible solutions for customers.

The reality is that dynamic IP based distribution systems more than adequately hold the potential of distributing accessible content. As we move into the next generation of MPDS, the traditional technical and economic constraints will become a footnote in our progress toward developing fully universally accessible programming.

### **Alternative IP Based AD Delivery**

On June 13, 2016, the Commission awarded Disney Corporation its AAA Accessibility Award, in response to the Disney Movies Anywhere App. This app for Apple iOS devices allows synchronized audio description capable of running in tandem with Disney movies wherever the movie is being presented. Further developments like WGBH's automated text-to-speech scripting for online videos, produced through their National Center on Accessible Media (NCAM), demonstrates the work undertaken in the industry to develop innovative solutions toward meeting the future of video as it moves more toward IP delivery systems.

ACB continues to work with industry in this space that cultivates new approaches toward delivering accessible content to audiences. At the 56<sup>th</sup> ACB annual convention in 2017, ACB presented Actiview with an Audio Description Award for their innovative app which allows consumers to download and pair a descriptive audio track with video content no matter the means of distribution or setting. Over the past three years, ACB has worked closely with the National Association of Broadcasters to identify ways in which automated audio description feeds could be generated to describe dynamic video images. While this technology is still in its infancy, ACB firmly believes that the current trajectory of deploying artificially intelligent (AI) and deep learning networks points us in a direction of significant breakthroughs in our capabilities to augment human sense perception, creating solutions that work in real-time. We look forward to having a seat at the table with government and industry as this technology continues to develop, and we continue to find additional ways in which it can be utilized in the electronic communications arena.

## **Convening Stakeholders**

ACB commends broadcasters and program developers for working collaboratively to expand access to accessible media for individuals who are blind and visually impaired. ACB has been working as well with internet and broadcast leaders to drive further innovation in this area. We believe that the Commission and Congress play unique roles in encouraging similar partnerships between industry and advocates. As more and more MPDS providers move away from traditional terrestrial broadcast and cable delivery models, government has a responsibility to assure that we do not backslide on the successes of the CVAA. Government can work to bring together key stakeholders creating a space where innovation will thrive.

The continued convening of industry and advocates through the Commission's Disability Advisory committee (DAC) is one such example of how stakeholders can come together at the table and partner toward expanding further access to media. Thanks to the Commission's role in convening stakeholders to address key accessibility concerns, such as the aforementioned collaboration between ACB and NAB, ACB has been able to foster relationships that have broken down walls that have traditionally stood between industry and consumers. It is our hope that the Commission will continue to provide a space for such convening and collaboration.

In closing, ACB believes the CVAA has provided significant advantages toward creating a burgeoning audio description marketplace, one that was minimal at best prior to the legislation. As the incidence of blindness will significantly increase over the next decade, the demand for such content will also increase throughout American households. In light of this, ACB hopes that the Commission and Congress will continue to seek ways to build on the success of the CVAA.

ACB thanks the Commission for the opportunity to weigh in on this important issue. If you have questions pertaining to these comments, or need further information, please do not hesitate to contact ACB. We appreciate the opportunity to work with the Commission toward promoting true universal access — embracing programming that is all-inclusive — and look forward to working with Congress and the Commission as we move into the second decade of the CVAA.

Sincerely,

Clark Rachfal  
Director of Advocacy and Governmental Affairs  
American Council of the Blind